

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” Iowa Administrative Code.

The IDED Board adopted previous amendments to the Targeted Jobs Withholding Tax Credit Program (TJWTC) on January 15, 2009. These amendments were to become effective on March 18, 2009. However, at its March 6, 2009, meeting, the Administrative Rules Review Committee (ARRC) voted to delay the effective date for 70 days until May 26, 2009, to allow the Department to work through the legislative process and any pending legislation that would impact TJWTC.

2009 Iowa Acts, Senate File 304, was passed during the 2009 legislative session and will become effective on July 1, 2009. 2009 Iowa Acts, Senate File 304, makes substantive changes to TJWTC.

These amendments bring the rules into compliance with 2009 Iowa Acts, Senate File 304. These amendments will become effective on July 1, 2009, and will apply to all requests submitted by the pilot project cities on or after that date. These amendments:

- Add definitions of “employer’s taxable capital investment” and “local financial support.”
- Require the total amount of awarded withholding tax credits to be stated in the withholding agreement.
- Establish a limit on the total amount of withholding tax credits awarded based upon the total dollar amount of qualifying investment in the project.
- Prohibit the entering of a withholding agreement by an employer not located within a pilot project city when another Iowa community competes for the same project.
- Extend until 2013 the ability of a pilot project city to enter into a withholding agreement.
- Clarify required components of a withholding agreement and local match requirements.
- Require base employment to be established by the business at the time of submission of an application.
- Establish the Department’s review authority to approve a withholding agreement application.
- Modify reporting requirements of pilot project cities and require annual verification by the Department.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest as there is a need to have rules in effect on July 1, 2009, the start of the state fiscal year. The amendments update the program rules to correspond with the requirements of 2009 Iowa Acts, Senate File 304.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and the amendments be made effective on July 1, 2009. These amendments confer a benefit on the public by ensuring that the program rules are consistent with 2009 Iowa Acts, Senate File 304, which becomes effective on July 1, 2009. The pilot project cities and eligible businesses will benefit if the Department is able to have program rules in effect at the start of the fiscal year. The pilot project cities will be able to continue processing applications from eligible businesses, and the pilot project cities will know what procedures must be followed to request Department approval of withholding agreements.

These amendments are also published herein under Notice of Intended Action as **ARC 7846B** to allow for public comment.

These amendments will become effective on July 1, 2009.

These amendments are intended to implement Iowa Code section 403.19A as amended by 2009 Iowa Acts, Senate File 304.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions of “Employer's taxable capital investment” and “Local financial support” in rule ~~261—~~**71.1(403)**:

“*Employer's taxable capital investment*” means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

“*Local financial support*” or “*local match*” means cash or in-kind contributions to the project from a private donor, a business, or the pilot project city. “Cash” includes but is not limited to loans, forgivable loans or grants. “In-kind contributions” includes but is not limited to the construction of private or public infrastructure or other amenities and improvements directly related to a project.

ITEM 2. Amend subrule 71.4(2) as follows:

**71.4(2)** *Entering into ~~an~~ a withholding agreement.*

a. Agreement between pilot project city and business. A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area.

b. Total amount of withholding tax credits. The withholding agreement shall provide for the total amount of withholding tax credits awarded. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

c. Ineligibility if there is competition between pilot project city and non-pilot project city. A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the department.

d. Option of a business to enter into withholding agreement. A business shall not be obligated to enter into a withholding agreement with a pilot project city.

e. 2013 sunset date. A pilot project city shall not enter into a withholding agreement with a business after June 30, ~~2010~~ 2013.

f. Department approval of withholding agreements. Prior to entering into a withholding agreement with a business, a pilot project city shall request department approval of the withholding agreement. The process for requesting approval from the department is described in subrule 71.5(1).

ITEM 3. Amend subrule 71.4(3) as follows:

**71.4(3)** *Required components of a withholding agreement.* A withholding agreement shall be disclosed to the public and shall contain all of the following:

a. A copy of the adopted development agreement between the pilot project city and employer, including how withholding funds generated by the city will be used.

b. A list of all other incentives or financial assistance the business has requested or is receiving from other federal, state, or local economic development programs including loans, grants, forgivable loans, and tax credits.

c. The amount of assistance provided by the pilot project city for the project.

d. Documentation of the approval of the project by local participating authorities.

e. The total amount of withholding tax credits awarded.

f. The total number of created and retained jobs included in the project.

g. The required countywide average wage.

h. The total qualifying investment included in the project.

i. The total required matching local financial support for the project.

ITEM 4. Amend subrule 71.4(7) as follows:

**71.4(7)** *Local match requirement.* ~~A pilot project city entering into a withholding agreement shall arrange for a match of at least one dollar for each withholding dollar received by the city. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project.~~

a. A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

b. If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph "a."

c. If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

d. A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

ITEM 5. Amend subrule 71.5(1) as follows:

~~71.5(1) Application for project approval.~~ Request for department approval of withholding agreement.

a. Request for approval form. Prior to entering into a withholding agreement with an employer, a pilot project city must receive approval from the department. ~~The department shall develop a standardized application for project approval and shall make the application available to eligible pilot project cities. The application for project approval shall include, but not be limited to, the following information regarding a project:~~ The department shall develop and make available to the pilot project cities a standardized form to request department approval of a proposed withholding agreement. To request department approval of a proposed withholding agreement, a pilot project city shall provide the department with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the department and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

~~(2) (3)~~ Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

~~(3) (4)~~ A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

~~(4) (5)~~ A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.

~~(5) (6)~~ A letter or resolution of support from the local government showing support for the project.

b. Timing of submittal. ~~Applications for project approval for the targeted jobs withholding tax credit program~~ Requests for department approval of a proposed withholding agreement may be submitted at any time. The department will review applications for projects requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. Department action on requests for approval. The department may approve, deny, or suggest changes to a withholding agreement. The department shall only deny an agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) or the local match requirement as stated in subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the department. A pilot project city will be notified in writing of the department's decision regarding the project proposed withholding agreement.

ITEM 6. Amend subrule 71.6(1) as follows:

71.6(1) Required reports.

a. No change.

b. The pilot project city shall provide information documenting the total amount of payments and receipts from the special fund under the withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, a grant not related to property taxes, or to make a direct payment of taxes. The pilot project city shall submit this information to the department annually by September 1 covering the prior fiscal year (July 1 to June 30). The department shall verify the information provided by the pilot project city. The department will verify job creation or retention using the method described in 261—Chapter 188.

~~b. c.~~ The department may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

d. The department shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

(1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

(2) Information substantiating the total amount of qualifying investment made in the project;

(3) Information substantiating the total amount of local financial support made in the project;

(4) Payments and receipts as described in paragraph 71.6(1)“b.”

ITEM 7. Amend subrule 71.6(2) as follows:

**71.6(2) Annual report.** ~~The department shall prepare an annual report for the governor, the general assembly, and the legislative services agency on the targeted jobs withholding tax credit program. As required by Iowa Code section 15.104(9)“k,” the department includes in its annual report information about the targeted jobs withholding tax credit program. This report shall be~~ is due on January 31 of each year. ~~The report shall include but not be limited to the following:~~

~~a. — The amount of withholding funds each project received.~~

~~b. — The number of new and retained jobs resulting from the program.~~

~~c. — The average wage of jobs resulting from the program.~~

~~d. — An evaluation of the investment made by the state, including but not limited to the terms in paragraphs “a” to “c” of this subrule.~~

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.